

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
April 26, 2012

In the Matter of OGG/SAMUEL, Minors.

No. 306261
Genesee Circuit Court
Family Division
LC No. 10-126915-NA

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

Respondent A. Ogg appeals as of right from a circuit court order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(*ii*) (failure to prevent injury or abuse), (c)(*i*) (the conditions that led to the adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (the child is reasonably likely to be harmed if returned to the parent's home). Ogg is the mother of L. Ogg, M. Ogg,¹ and twins JS1 and JS2. J. Bucholz is L. Ogg's father, and J. L. Samuel is the twins' father. The trial court also terminated Samuel's parental rights, but he is not a party to this appeal. We affirm.

I. FACTS

The Department of Human Services (DHS) filed a petition for permanent custody of the children with respect to Ogg and Samuel in August 2010. It alleged that JS1 was hospitalized for treatment of a skull fracture; JS1 also had "purplish bluish" bruising on her buttocks. Ogg reported that she was taking care of JS1 while Samuel was at the store. According to Ogg, she was changing JS1's diaper on the couch, when she "wiggled" and fell to the floor. Ogg had no explanation for the bruising to JS1's buttocks, saying she did not notice it before going to the hospital. According to the DHS petition, medical personnel reported that Ogg's explanation was not consistent with the child's injuries. Following a preliminary hearing, the trial court authorized the petition. L. Ogg was placed with his father, and the twins were placed in foster care.

In December 2010, Ogg pleaded no contest to the allegations in the petition, and the trial court took jurisdiction over the children. The trial court adjourned the termination hearing,

¹ M. Ogg, a legal ward of a relative, is not involved in these proceedings.

however, and directed Ogg to participate in services in the interim. Services were to include parenting classes, domestic violence classes; a psychological evaluation with Dr. Sommerschild; psychiatric counseling, if recommended; individual counseling, including anger management counseling; random drug screens; supervised parenting time; housing; and a legal source of income.

According to a March 2011 court report, Ogg confessed that she had lied about the circumstances surrounding JS1's injury and now said that Samuel was alone with the child when she was injured. Ogg claimed that Samuel had subjected her to domestic violence and that she lied about the incident "because she was afraid that [Samuel] would abuse her if she told the truth." Ogg had by then completed an anger management/domestic violence program. She had left Samuel and was living with her parents. That home, however, was not suitable for the children because Ogg's mother "has previously served prison time for murdering her son."

In June 2011, the DHS filed a supplemental petition for termination of Ogg's and Samuel's parental rights. In addition to the allegations in the original petition, it alleged that in late October 2010, Bucholz observed an injury to Ogg's eye, and Ogg reported that Samuel had punched her in the eye. Following that incident, Ogg remained with Samuel, who was not arrested for domestic violence. The petition requested termination pursuant to §§ 19b(3)(b)(i), (b)(ii), (c)(i), (g), (j), and (k)(iii).

A termination hearing was held in September 2011. Jennifer Johnson, a CPS worker for Genesee County, testified that JS1 was admitted to Hurley Hospital on the evening of August 7, 2010. The hospital reported the matter to CPS. Johnson spoke to Ogg, who told her that the baby "wiggled off [a couch] and rolled onto the floor" while Ogg was changing the baby's diaper. Samuel told Johnson that he was not at home when this happened. Ogg did not say anything regarding the bruising to the baby's buttocks.

While at the hospital, Johnson spoke with several members of the hospital staff. One physician's assistant reported that "the fracture could have happened" the way that Ogg claimed, stating that "there is always that possibility." But one nurse opined that the bruising was "weird," and another nurse stated that Ogg's "stories were inconsistent." Johnson testified that she also spoke with Dr. Brian Nolan on August 12, 2010, and he characterized JS1's injury as "severe child abuse." He also said that the baby had some bruising around one ear and on the buttocks. Johnson informed Ogg that child abuse was suspected and that all the children would have to be removed from the home. At that time, Ogg maintained that JS1 fell off the couch, landing on some toys, and then hitting the ground. Based on the information obtained, Johnson petitioned for emergency removal of the child.

Johnson testified that at some unspecified time, she went to Ogg and Samuel's home to see the couch from which Ogg claimed the baby fell. Johnson testified that the couch was "set very low" and "wasn't even three feet off the floor." The toys that Ogg showed Johnson were "[l]ittle plastic toys"; "nothin' real hard."

Dr. Nolan testified that his examination of JS1 revealed "multiple bruises." There were bruises below the left ear, "striking bruises of the buttocks," and "two lines on each side of the buttock crease high up which was very characteristic of a beating of the buttocks." Dr. Nolan

described the “two purplish red lines” on the buttocks as a “textbook picture[] of a beating of the buttock.” JS1 had another bruise extending across her lower back and a small circular bruise on the right buttock. Dr. Nolan did not observe any other external injuries. However, JS1 had “a left parietal skull fracture” and “a small subdural,” i.e., “a small amount of bleeding around the brain.” Dr. Nolan testified that the child’s multiple injuries could not have been sustained during a single fall from a couch; he did not know whether the injuries were sustained at different times or during a single incident. Dr. Nolan opined that JS1’s injuries were not consistent with a fall from a couch because multiple parts of the body were involved and the buttock bruising was “typical for abuse.” He explained that even children who are ambulatory and fall down “tend not to bruise over soft areas of the body.” It is more common for them to bruise “over the front of the bony points,” such as the forehead and knees. In addition, bruises to the ear “are very unusual in accidents.” Dr. Nolan testified that although children can sustain skull fractures in household accidents, children JS1’s age do not usually “get those kind of bruises” because “they are not walking around.” Given that such injuries “are all compatible with abuse,” Dr. Nolan concluded that “this baby was abuse[d].”

Kelly Clark-Huey, the foster-care worker on the case until July 2011, testified that Samuel had two other children, A. Samuel and B. Samuel, who lived with their mother. When she received the case, she ran a history check on Samuel and “there was extensive CPS history . . . in Saginaw County.”

Clark-Huey testified regarding Samuel’s CPS history. The DHS filed a petition for temporary custody of A. Samuel in October 2006. It alleged that the child was “found to have multiple injuries,” including bruising to the right upper arm, forehead, and temporal region of the head, and “a small conjunctival hemorrhage on the right eye.” Samuel’s explanation for the injuries was “not consistent with all the injuries noted.” The DHS filed a petition for temporary custody of A. Samuel and B. Samuel in May 2008. A. Samuel returned home in February 2008. In May 2008, A. Samuel was again found to have “bruising/contusions on her buttocks.” Samuel reported that “this was accidental bruising that occurred during a fall in some brush and/or stump,” but the bruises were diagnosed as nonaccidental. Samuel pleaded guilty to fourth-degree child abuse in exchange for dismissal of a charge of second-degree child abuse. Clark-Huey further testified that Samuel had been arrested for domestic violence in March 2006 and February 2007.

Clark-Huey also testified that Ogg saw Harold Sommerschild for a psychological evaluation in September 2010. According to the report, Ogg had no concerns about Samuel taking care of the children, despite Samuel’s past child abuse case. She claimed that if there were any problems with Samuel’s parenting of her son, her son would tell her.

Clark-Huey further testified that on March 14, 2011, she spoke to Ogg, who admitted that she was not present when JS1 was injured. Ogg stated that she lied because Samuel had been domestically violent with her, and she was afraid what he would do if she reported that he was the “person that had done it.” Ogg also reported that she had left Samuel, and “she wasn’t going to go back.” In fact, she was prepared to testify against him when it came to trial, and she had a receipt to prove that “she was the one that was shopping at the time.” Ogg further reported that she was staying with her parents. Clark-Huey testified that Ogg told her that “she didn’t want anything more to do with” Samuel. “[S]he just wanted to get her life together and get her kids

back.” Clark-Huey offered to help Ogg if she needed “to get into a safe house or whatever[.]” Ogg gave Clark-Huey a written statement that read: “As of 3-12-11 I have left [Samuel] and no longer have any contact with him because I have admitted that I was not the one at home when [JS1] obtained the skull fracture and I will be testifying to this in court on 3-24-11.”

Clark-Huey testified that approximately 10 days after Ogg confessed that she had lied about the circumstances surrounding JS1’s injury, Ogg posted on Facebook that she was engaged. Ogg admitted posting the entry, but denied that she was engaged to Samuel. She stated that she was “being harassed by a bunch of single guys and that was the quickest way I could get them to leave me alone.” The following day, Rebecca Torrez, the CPS worker on the case involving A. Samuel, made an unannounced visit to Samuel’s house. Ogg was there, and Samuel introduced her to Torrez as his fiancée. Clark-Huey testified that sometime after Torrez went to Samuel’s house, she made her own visit. Ogg was there and told Clark-Huey “that she was only there for a short time.”

Clark-Huey recommended that Ogg’s parental rights be terminated. In light of the circumstances, Clark-Huey was concerned that the domestic violence could continue. Clark-Huey pointed to Ogg’s inconsistent statements, first regarding how JS1 was injured and then later about her continuing relationship with Samuel.

Clark-Huey admitted that Ogg and the children were bonded. However, she opined that termination was in the children’s best interests “[b]ecause there’s too many unanswered questions[,] [t]oo much secrecy.” She questioned Ogg’s ability to protect the children, given that Ogg was once again involved with Samuel. Clark-Huey stressed that Ogg’s ability to parent was not the issue; the concern was her ability to protect the children “because she’s choosing her boyfriend over her children.”

Patrice Maul, the foster-care worker who took over for Clark-Huey, testified that in late July 2011, Ogg called to report a change of address. She stated that she had moved out of Samuel’s home and was living with her parents.

The trial court found that the only possible conclusion to be drawn from the evidence was that Samuel had “beat that child” and “seriously injured that little girl.” The trial court stated, “I can’t imagine how anyone could . . . conclude anything differently other than that [Samuel] . . . hurt that child.” The trial court therefore found that termination of Ogg’s parental rights was warranted under § 19b(3)(b)(ii). It explained:

I so which [sic] I could find a different . . . decision but I do think that you did fail to protect those kids and I feel that I’ve given you so many chances. Every time we come here, I keep hoping you’re going to wake up; every single time. We go through that long list of the reasons he’s not getting parenting time for a reason. Every single time I think, “When is she going to wake up?” We’ve been doing it for a year. Today? Today you decide? Your twins have been in foster care for longer than you took care of them yourself. And it’s too late. It’s too late to decide today. . . . [W]e’ve delayed these trials and I gave you parenting time. I thought, you know what? You know what I thought? I thought if she could get her hands on those babies—the reason I gave you parenting time

and not him, if you could get your hands on those babies, if you could be with them again, you would change your mind. You would pick them over the guy that beat you; and you didn't. It's too late. I can't keep . . . giving you chances at their expense. . . .

You . . . completed the classes. You don't have a history of hurting your kids. All of that is true, but . . . this is my guess. If the first time Mr. Bucholz saw that you were injured was the black eye, I can't imagine how many times he hurt you on your back, on your arms, the places that other people couldn't see. So the question in my mind, how many times did he hurt your kids when nobody knew? If he was hurting you that way, if he hurt [A. Samuel] that way, how many other times was he hurting them and you let him? You sat here and you didn't object—all those hearings. Ms. Carte's right, we went through all those hearings and every time painfully listen to all the reasons why he shouldn't have parenting time, every single time, didn't we? . . . So I do find that you failed to protect your kids

[T]he second part of that statute is, is that do I believe that there's a reasonably [sic] likelihood that the kids will suffer again? I do. When asked on a couple of . . . different times, at least two, maybe three times, maybe more when you sat up today you were asked over and over again, so . . . what do you think happened? Your answer is, "I don't know." What else could it be? He was the only one home with the kids. He was the only one home with [JS1]. Who else could have fractured her skull and bruised her body and left a bruise on the back of her ear? Who else? There was nobody else and yet today . . . is the day you're [sic] light bulb is going on and . . . you still sit here and say, "I don't know." Of course it's him. Please don't go back to him for your own safety. I just don't really know that you're done. I don't know. So . . . I don't think you did hurt those kids. I think he did. So I'm going to find that . . . [§ 19b(3)(b)(ii)] does [apply][,] that you failed to prevent injury to your kids and that there's a reasonable likelihood that the kids will suffer injury and abuse in the foreseeable future placed in your home. And . . . that DHS has clearly and convincingly met its burden of proof under [§ 19b(3)(b)(ii)] of the statute.

For the same reasons, the trial court found that termination was warranted under §§ 19b(3)(c)(i), (g), and (j). It found that §§ 19b(3)(b)(i), (c)(ii), and (k)(iii) did not apply to Ogg.

Regarding the children's best interests, the trial court ruled:

I do believe that it's in the twins' best interest. I'm going to start with the twins. . . . [T]hey've been in someone else's home for over a year now waiting for you to . . . decide to leave him; to leave Mr. Samuel. They can't wait any longer. . . . [T]hey've been in care twice as long as they've been alive; or as they were in your care, I guess. Seven months with you and now . . . thirteen months in care, so almost twice as long with somebody else as they were with you. . . . [M]y recollection is is they're doing very well where they are. They deserve to have parents that . . . protect them from abuse and don't inflict that type of abuse

upon them, someone that will love them and protect them. And while I'm sure that you love your children, I'm not sure you're going to protect them. So I'm going to find it's in . . . the twins [sic] best interest to terminate your parental rights.

As to [L. Ogg], I've gone back and forth on this with [L. Ogg] as . . . to best evidence [sic] because I think that he's in a safe place right now. I . . . keep asking the same questions because I keep trying to figure out what's . . . best for [L. Ogg]. I mean, I can't imagine going home and having to be Mr. Bucholz to tell his son that he's never seeing mom again. But I also do have a . . . large domestic call and I'll tell you right now, . . . what if something happens to the custodial parent? . . . [I]f you're still a parent, you can go pick him up. If Mr. Bucholz dies tomorrow, you can go get him and I can't take that risk so I am going to find that it's in [L. Ogg's] best interest to terminate your parental rights to him as well. . . .

Ogg now appeals.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that the DHS has proven at least one of the statutory grounds for termination by clear and convincing evidence.² We review for clear error a trial court's decision terminating parental rights.³ A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made.⁴ We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.⁵

B. ANALYSIS

The evidence showed that Ogg was involved in a relationship with an abusive partner, Samuel. In August 2010, Ogg's infant daughter, JS1, who was only seven months old, was severely abused. Ogg initially claimed that Samuel was not present when the child was injured, but later admitted that the child was in Samuel's care of at the time of her injury. The trial court ultimately found that Samuel was the person who injured the child and that finding is not clearly erroneous. After the child protective proceeding was brought, Ogg was made aware that Samuel

² MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999).

³ MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633.

⁴ *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

⁵ MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

had abused another child. Ogg was provided with domestic violence counseling, but she continued to maintain her relationship with Samuel and was living with him until late July 2011. Although Ogg testified that she had left Samuel because she was tired of “being scared of him,” she told a foster-care worker that they were still a couple and testified that she remained in contact with him. Further, while JS1 was abused under circumstances indicating that Samuel was the only possible abuser, Ogg refused to acknowledge that Samuel could be responsible. In light of the evidence of the domestic violence between Ogg and Samuel, Ogg’s refusal to acknowledge that Samuel had severely injured JS1, and Ogg’s inability to sever her relationship with Samuel, despite her knowledge of his abusive history, the trial court did not clearly err in finding that the children were reasonably likely to be harmed if returned to Ogg’s home, thereby justifying termination under § 19b(3)(j). We, therefore, conclude that the trial court did not clearly err in finding that DHS established by clear and convincing evidence sufficient grounds for termination of Ogg’s parental rights under § 19b(3)(j).

Only one statutory ground for termination need be proved.⁶ Because the trial court did not clearly err in finding that § 19b(3)(j) was proven by clear and convincing evidence, it is unnecessary to address the remaining statutory grounds for termination. Regardless, any error in relying on §§ 19b(3)(b)(ii), (c)(i), or (g) as additional statutory grounds for termination would be harmless.⁷

III. BEST INTERESTS DETERMINATION

A. STANDARD OF REVIEW

Once DHS has established a statutory ground for termination by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child’s best interests, then the trial court is required to order termination of parental rights.⁸ There is no specific burden on either party to present evidence of the children’s best interests; rather, the trial court should weigh all evidence available.⁹ We review for clear error the trial court’s decision regarding the child’s best interests.¹⁰

B. LEGAL STANDARDS

In determining the child’s best interests, a trial court may consider a variety of factors including the parent’s history, unfavorable psychological evaluations, the child’s age, inappropriate parenting techniques, and continued involvement in domestic violence.¹¹ A trial

⁶ *In re CR*, 250 Mich App 185, 207; 646 NW2d 506 (2002).

⁷ *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

⁸ MCL 712A.19b(5); *In re Trejo Minors*, 462 Mich at 351.

⁹ *In re Trejo Minors*, 462 Mich at 353.

¹⁰ *Id.* at 356-357.

¹¹ See *In re Jones*, 286 Mich App 126, 131; 777 NW2d 728 (2009).

court may also consider the strength of the bond between the parent and child, the visitation history, the parent's engaging in questionable relationships, the parent's compliance with treatment plans, the child's well-being while in care, and the possibility of adoption.¹² A trial court may also consider the child's need for permanence and the length of time the child may be required to wait for the parent to rectify the conditions, which includes consideration of the child's age and particular needs.¹³

C. ANALYSIS

Although Ogg testified that she was bonded to her children and would do whatever was necessary to protect them, that testimony was belied by the evidence that Ogg refused to believe that Samuel had abused JS1 and continued to maintain a relationship with him, which created a risk of substantial harm to the children should they be returned to Ogg's custody. In addition, Ogg never established suitable housing for the children, living either with her abusive boyfriend or with her mother who had previously been convicted of murdering a child. We conclude that the trial court did not clearly err in finding that termination of Ogg's parental rights was in the child's best interests.

We affirm.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

¹² See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

¹³ See *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).